APPENDIX A

LELAND LESTER SHAVER,
Appellant,

v.

BOB L. HUNTER, et al.,
Appellees.

No. 9320

Court of Appeals of Texas,
Amarillo.

Dec. 3, 1981.

Rehearing Denied Dec. 28, 1981.

Before REYNOLDS, C.J., and DODSON and COUNTISS, JJ.

DODSON, Justice.

As plaintiffs, Bob L. Hunter, John Zakrasek, Osco Abney, D.D. Tibbets and Myron Hart brought this action seeking, among other things, to enjoin Leland Lester Shaver, the defendant, from violating the "single family residency" use requirements of a restrictive covenant imposed on Virginia Place Addition, a Lubbock subdivision. The plaintiffs are homeowners in the subdivision. The defendant owns a corner lot and approximately one half of another adjacent lot in the subdivision. A single family residence is situated on the corner lot.

The defendant leases all of his property to the Lubbock Area Extended Rehabilitation Services, a non-profit corporation. In conjunction with the Texas Rehabilitation Commission, the corporation uses the property to provide sheltered living arrangements for severely handicapped persons. At the time of trial, the residence was occupied by a health care provider employed and paid by the commission and three handicapped clients of the corporation. The occupants are unrelated single young women. The three clients pay rent to the corporation, which in turn pays the rent to the defendant.

The covenant which plaintiffs sought to enjoin defendant from violating primarily restricted all lots of Virginia Place to use for

residential purposes only, specifying that a residence shall be construed to be a single family dwelling. Concluding that the use of the property did not comply with the single family residency requirements, the trial court enjoined the defendant from violating the restrictive covenant. The defendant appeals from the judgment and we affirm.

The defendant presents three points of error. With his first point, the defendant maintains that the use of the property in question complied with the restrictive covenant because "the house is a single family dwelling being used for residential purposes and the covenant does not reach beyond this prohibition." In effect, the defendant contends that the restrictive covenant limits only the construction of dwellings and not their use and occupancy.

We acknowledge that when the covenant restricts the form or character of the structure rather than limiting the use of the property to a single family residence, some courts refuse to enjoin group home living arrangements where the group functions as a single household unit. *See J.T. Hobby & Son, Inc, v. Family Homes Etc.*, 274 S.E.2d 174 (N.C.1981), (a married couple as resident managers and four mentally handicapped adults); *Malcolm v. Shamie*, 290 N.W.2d 101 (Mich.App.1980), (foster parent and five mentally handicapped women, with the court limiting its decision to "the same or very similar factual situations"); *Bellarmine Hills Ass'n v. Residential Systems Co.*, 84 Mich.App. 554, 269 N.W.2d 673 (1978), (a foster parent and fewer than six mentally handicapped children, where the children temporarily resided on the property in order to attend special classes).

Our analysis of similar cases further reveals that when the restrictive covenant limits the use of a piece of property to one single family residence rather than merely prescribing the form or character of the structure that can be built on that property the courts enjoin the group home living arrangement, commercial activity, and any living arrangement other than that of a single family residence. *See Jayno Heights Landowners Ass'n v. Preston*, 85 Mich.App. 443, 271 N.W.2d 268 (1978), (group home for elderly women); *Cash v. Catholic Diocese of Kansas City—St. Joseph*, 414 S.W.2d 346 (Mo.App.1967), (Mother Superior and eight to ten nuns); *Seaton v. Clifford*, 100 Cal.Rptr. 779, 24 Cal.App.3d 46 (1972), (home-owner and six or fewer mentally handicapped persons); *Davis v. Hinton*, 374 S.W.2d 723, 726 (Tex.Civ.App—Tyler 1964, writ ref'd n. r. e.), (premises occupied by business tenants and a lodger).

In support of his position, and relying on *MacDonald v. Painter*, 441 S.W.2d 179, 183 (Tex.1969), and *Southhampton Civic Club v. Couch*, 159 Tex.464, 322 S.W.2d 516, 518 (1958), the defen-

dant asserts that "restrictions are construed strictly in favor of the grantee and against the grantor and in favor of the free and unrestricted use of the property." In *Southampton*, the rule is properly stated "that in construing covenants restricting the use of land all *doubt* should, as a general rule, be resolved in favor of the freer use of property and against restrictions." (Emphasis added). *Id.* However, the general principle stated in *Southampton* should not be applied in such a way as to defeat the clear intent and the plain and unambiguous purpose expressed in the restriction. *See Stephenson v. Perlitz*, 532 S.W.2d 954, 956 (Tex.1976); and *Knopf v. Standard Fixtures Co., Inc.*, 581 S.W.2d 504 (Tex.Civ.App.—Dallas 1979, no writ).

The covenant in question provides that all lots shall be used for residential purposes only and states that a "residence shall be construed to be a single family dwelling." The clear intent and the plain and unambiguous purpose expressed in the covenant is to restrict the use of the property to a single family residence. In *Davis v. Hinton*, 374 S.W.2d 723 (Tex.Civ.App.—Tyler 1964, writ ref'd n. r. e.), the court construed a restrictive covenant identical in effect to the covenant before us. In *Davis*, the appellant made the same challenge that the defendant asserts here. In disposing of the appellant's challenge, the court determined that the covenant limited the use of the property to a single family residence rather than merely prescribing the form or character of the structures that could be built on the property.

The court's determination in *Davis* was predicated on the general rule that as employed in building restrictions the words "dwelling house" are, in the absence of anything to the contrary, construed in their ordinary sense as a house occupied as a residence rather than as a store, office or other building; and that the term defines the *use* of the property rather than merely the form or character of the structure. *Id.* at 726. In the present case we conclude that the clear intent and the plain and unambiguous purpose expressed in the restrictive covenant in question is to limit the use of the property to a single family residence rather than merely to prescribe the form or character of the structure. The defendant's first point is overruled.

In his second point of error, the defendant maintains that the trial court erroneously failed to conclude that the people occupying the property constitute a single family and, therefore, their use of the property is permissible under the restrictive covenant. In essence, he contends that the four unrelated single women constitute a single housekeeping unit and that the housekeeping unit constitutes a single family within the covenant's meaning. We disagree.

When construing restrictive covenants which limit the use of property to "single family residence," the courts generally construe the term to mean a "nuclear family" or an "extended family." The "nuclear family" consists of only "parents, children and domestic servants." *See Rudy v. Southampton Civic Club*, 271 S.W.2d 431, 435 (Tex.Civ.App.—Waco 1954, writ ref'd n. r. e.). Generally, the "extended family" consists of a nucleus group of persons related by blood, marriage or adoption which may include parents, children, uncles, aunts, nieces and the like. This family group is often extended to include the family's domestic servants and incidental boarders and lodgers. Annot., 71 A.L.R.3d 693, 699 (1976). *Cf. Southampton Civic Club v. Couch*, 159 Tex. 464, 322 S.W.2d at 518.

The defendant primarily relies on the *City of White Plains v. Ferraioli*, 357 N.Y.S.2d 449, 34 N.Y.2d 300, 313 N.E.2d 756 (1974), to support his position that the young women's living arrangement constitutes a single family residence within the meaning of the restrictive covenant. In *Ferraioli*, the court construed a city zoning ordinance. The Ferraioli house was located in an R-2 zone of the city where the principal permitted uses were "a 'Single family dwelling for one housekeeping unit only,' fire houses, police stations, public schools and churches." In the zoning ordinance, "family" was defined as "one or more persons limited to the spouse, parents, grandparents, grandchildren, sons, daughters, brothers or sisters of the owner or the tenant or of the owner's spouse or tenant's spouse living together as a single house-keeping unit with kitchen facilities." We observe that this definition basically follows the "extended family" view.

The Ferraiolis leased their house to Abbott House, Inc., a private agency licensed by the state of New York to care for neglected and abandoned children. The occupants of the house consisted of an adult couple, their two children and ten foster children. The adult couple was paid a salary to care for the foster children and all of the household expenses were paid by Abbott House with funds received from the city of New York. The court stated that the living arrangement was permanent and *"akin to a traditional family* which also may be sundered by death, divorce, or emancipation of the young. Neither the foster parents nor the children are to be shifted about; the intention is that they remain and develop ties in the community. *The purpose is to emulate the traditional family and not to introduce a different 'life style'."* (Emphasis added). The court distinguished this living arrangement from a temporary one such as a group of college students sharing a house and commuting to a nearby school, or a "so-called 'commune' style of living." The court determined, as a matter of law,

that the group in question constituted a family for the purposes of the zoning ordinance.

As we analyze *Ferraioli*, the court by judicial fiat (1) amended the zoning ordinance's definition of "family" by adding "foster children"; (2) extended the "extended family" view to include foster children; and (3) in effect, advanced an "alternative" or "emulated" family view. In the present case, *Ferraioli* is neither controlling nor persuasive. Here, the construction of the restrictive covenant is controlled by the definition of family set out in *Southampton Civic Club v. Couch*, 159 Tex. 464, 322, S.W.2d at 518.

In *Southampton*, the court construed a restrictive covenant which limited the use of the property to a single family residence purposes. Seven suits were filed and consolidated for trial. The relief sought in each case was to restrain the defendant-owner from renting a room or rooms in his residence for lodging. Most of the lodgers were students at Rice Institute. The trial court concluded that the renting of rooms to the students violated the restrictive covenant, but submitted to the jury the defendant's waiver issues. The jury found no waiver. The trial court rendered judgment enjoining the owners from violating the restrictive covenant. The Court of Civil Appeals, 313 S.W.2d 360, 365, reversed the trial court's judgment, dissolved the injunction and rendered judgment for the defendant-owners.

In the Supreme Court, the petitioners relied on the "nuclear family" definition in *Rudy v. Southampton Civic Club*, 271 S.W.2d at 435. The Supreme Court disapproved of that definition *(i.e.*, "parents, children, and domestic servants") as being "entirely too restrictive" because "it would exclude a dependent mother or an invalid brother or sister." 322 S.W.2d at 518, 159 Tex. 464. In further disposing of the petitioner's position, the court stated that the generally accepted definition of the word "family" is "a household, including parents, children and servants, and, as the case may be, lodgers or boarders." *Id.* The court determined that the restrictive covenant was not violated by a family incidentally renting a spare room in its single family residence. In effect, the court rejected the limited "nuclear family" view and adopted the less restrictive "extended family" view. The Supreme Court affirmed that part of the Court of Civil Appeals' judgment which reversed the trial court's judgment and dissolved its injunction, and remanded the action for a determination of whether the homeowners were operating commercial boarding houses.

In this instance, the occupants of the property in question do not constitute a family under the *Southampton* definition. We have not been directed to, nor have we found, a Texas case decided

since *Southampton* which even suggests or intimates that the definition should be extended to include four unrelated single adults. Accordingly, we overrule the defendant's second point of error.

In his third point of error, the defendant maintains that the restrictive covenant in question is unreasonable and against public policy and, therefore, is unenforceable in this case. In effect, the defendant contends that for public policy considerations, his use of the property is entitled to preferred treatment because the property is used to provide a sheltered living arrangement for three mentally or physically handicapped persons. We disagree.

In support of his position, the defendant cites general policy statements from federal and state legislation.* In each instance, among other things, the legislation was enacted to encourage the de-institutionalization of handicapped persons. Viewed broadly, the legislation in each instance was also enacted to encourage and to assure equal protection of the law to the handicapped person. Otherwise, the legislation would be subject to unnecessary constitutional scrutiny under the due process of law clause of the 5th and 14th Amendments and the equal protection clause of the 14th Amendment of the United States Constitution.

The State's action in enforcing a restrictive covenant is subject to constitutional scrutiny under the 14th Amendment's equal protection clause. *See Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1947). For us to follow the defendant's contention, we would have to say to the property-owner plaintiffs, "You can enforce the restrictive covenant against all non-single family residence uses except such living arrangements which include handicapped persons." That type of selective enforcement and preferred treatment to the handicapped would not pass constitutional muster. *See University of California Regents v. Bakke*, 438 U.S. 265, 293–98, 98 S.Ct. 2733, 2749–50, 57 L.Ed.2d 750 (1978), particularly that portion of Mr. Justice Powell's opinion when, speaking for the majority of this landmark reverse discrimination case, he addresses the "serious problems of justice connected with the idea of preference itself." *Id.* at 298, 98 S.Ct. at 2750. We overrule the defendant's third point of error.

In their first amended petition, the plaintiffs sought injunctive relief against the defendant under the zoning ordinances of the City of Lubbock. The trial court determined that the plaintiffs did not have standing to enforce the City's zoning ordinances. By cross-point, the plaintiffs challenge the trial court's determination. In view of our disposition of the defendant's three points of error,

* 42 U.S.C. 6010 (2) (The Developmentally Disabled Assistance and Bill of Rights Act), and sections 2(a), (b) & (c), and 7, Article 5547-300 (Mentally Retarded Persons Act of 1977).

we deem it unnecessary to consider the plaintiffs' cross-point.

The judgment is affirmed.

COUNTISS, Justice, concurring.

I concur in the opinion of the court. It correctly analyzes and resolves the points of error under existing Texas law. If, however, the definition of "family" as used in a restrictive covenant were an open question, I would reverse this case under the second point of error.

We are obligated to follow the definition of "family" that is stated in *Southampton Civic Club v. Couch*, 159 Tex. 464, 322 S.W.2d 516 (1958). Although that definition is imprecise at best, it clearly does not encompass the living arrangement in question here. The definition is, however, unrealistic and unduly restrictive. Certainly a family structured in the traditional sense is a desirable societal arrangement that promotes stability and imparts sound values, but I think it is wrong to conclude that it is the only societal arrangement entitled to be recognized as a family. The reasons for a broader definition are adequately stated in *Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 843, 97 S.Ct. 2094, 2109, 53 L.Ed.2d 14 (1977); *Crowley v. Knapp*, 94 Wis.2d 421, 288 N.W.2d 815 (Wis. 1980); *Berger v. State*, 71 N.J. 206, 364 A.2d 993 (1976); *City of White Plains v. Ferraioli*, 357 N.Y.S.2d 449, 34 N.Y.2d 300, 313 N.E.2d 756 (1974); and Developments—The Family, 93 Harv.L.R. 1156, 1218, 1270—83 (1980), and need not be repeated here.

Consistent with the foregoing authorities, I would prefer to define "family" as a stable housekeeping unit of two or more persons who are emotionally attached to each other and share a relationship that emulates traditional family values, promotes mutual protection, support, happiness, physical well-being and intellectual growth and is not in violation of the penal laws. Under that definition, the housemother and her three charges in this case would be permitted to remain in the dwelling in question.

The appellees in this case are justifiably concerned about maintenance of the integrity of their neighborhood. It seems to me, however, that the neighborhood is in no more danger from the definition I suggest than from the *Southampton Civic Club* definition, under which one or more parents, an unlimited number of children, servants and collateral kin and an undetermined number of lodgers or boarders could reside in a single dwelling.

For the foregoing reasons I concur in the opinion of the court, but would reach a different result if we were not obligated to follow the *Southampton Civic Club* case.

APPENDIX B

B-1

LELAND LESTER SHAVER	*	FROM THE 140TH DISTRICT COURT OF LUBBOCK COUNTY
NO. 9320 V.	*	
BOB L. HUNTER, ET AL	*	DECEMBER 3, 1981
	*	OPINION BY ASSOCIATE JUSTICE DODSON: CONCURRING OPINION BY ASSOCIATE JUSTICE COUNTISS

This cause came on to be heard on the transcript of the record and the same being inspected and it appearing to the Court that there was no error in the judgment, it is therefore ordered, adjudged and decreed that the judgment of the trial court be in all things affirmed.

It is further ordered that appellees, Bob L. Hunter, John Zakrasek, Osco Abney, D.D. Tibbets and Myron Hart, do have and recover of and from the appellant, Leland Lester Shaver, the amount adjudged below together with all costs in this behalf expended for which let execution issue.

It is further ordered that this decision be certified below for observance.

CLERK'S OFFICE-SUPREME COURT

Austin, Texas May 12, 1982

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of NO. C-1030, LELAND LESTER SHAVER

vs.

BOB L. HUNTER ET AL.

was this day refused. No reversible error.

Very truly yours,

GARSON R. JACKSON, Clerk

THE SUPREME COURT OF TEXAS
June 23, 1982

Ms. Renea Hicks, Attorney
5555 North Lamar - Suite K-109
Austin, Texas 78751

Mr. Donald M. Hunt, Attorney
P.O. Box 2585
Lubbock, Texas 79408

Dear Attorneys:

You are hereby notified that the motion for rehearing in the case of SHAVER v. HUNTER ET AL., No. C-1030 was this day overruled.

Very truly yours,

/s/

Garson R. Jackson, Clerk

APPENDIX C

NO. 98,568

BOB L. HUNTER, ET AL	*	IN THE 140TH DISTRICT COURT
VS.	*	OF
LELAND LESTER SHAVER	*	LUBBOCK COUNTY, TEXAS

JUDGMENT

On the 9th day of June, 1980 came on to be heard the above entitled and numbered cause and came the Plaintiffs in person and by their attorney of record and came the Defendant in person and by his attorney of record and announced ready for trial. The Court proceeded to hear the evidence, oral and documentary, after the close of which the Court requested, and the parties submitted, briefs in support of respective positions. All issues of fact and of law in the above entitled case have now been determined by the Court, and it appears to the Court, and the Court finds, that the Defendant is the owner of all of Lot Seven (7) and the West fifty feet (50') of Lot Six (6) in Virginia Place, an Addition to the City of Lubbock, Lubbock County, Texas, and a subdivision of the North One-Half (N/2) of Block Eight (8) of the Lubbock View Addition to the City of Lubbock in Lubbock County, Texas, that there are restrictive covenants applicable to the aforesaid lots and all other lots in said Virginia Place which restrict said lots and structures thereon to use for single-family residential purposes only, that the use being made by the Defendant of the property is not a single-family residential use and is in violation of the aforesaid restrictive covenants, and that the Plaintiffs are entitled to an injunction permanently enjoining the Defendant from continuing his violation of such restrictive covenants;

IT IS, THEREFORE, hereby ORDERED, ADJUDGED AND DECREED that the Defendant be, and he is hereby, permanently and perpetually enjoined from, and that he shall desist from, using or permitting anyone else to use his aforesaid property for any use other than single-family residential purposes and that Defendant is permanently and perpetually enjoined from continuing his violation of, or permitting any tenant of his to continue the violation of, the restrictive covenant of record in Volume 381, Page 51, et seq of the Deed Records of Lubbock County, Texas, which restricts the use of the aforesaid property owned by the Defendant for any purpose other than single-family residential purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs do not have standing as private individuals to maintain a suit to enjoin the alleged violation by the Defendant of the City of Lubbock Comprehensive Zoning Ordinance, 1975.

All other relief herein sought by either party is hereby expressly denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs do have and recover from the Defendant, LELAND LESTER SHAVER, all costs in this behalf expended, for all of which let writs of injunction and execution issue.

SIGNED this the 2d day of October, 1980.

/s/ William R. Shaver

Judge, 140th District Court,
Lubbock County, Texas

BOB L. HUNTER ET AL No. 98,568

v.

LELAND LESTER SHAVER

In the 140th District Court

of Lubbock County, Texas

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In response to a request by the Defendant, the Court, within the time permitted by law, makes and files the following as its Findings of Fact and Conclusions of Law:

Findings of Fact

1. On or about December 1, 1948 Vincent Carr and his wife, Ruth Carr, platted and dedicated a tract of land known as Virginia Place, more specifically described as "Virginia Place, an Addition to the City of Lubbock in Lubbock County, Texas and a subdivision of the North One-Half of Block Eight (8) of the Lubbock View Addition to the City of Lubbock in Lubbock County, Texas."

2. The Dedication Deed and the Plat of Virginia Place were filed for record in the office of the County Clerk of Lubbock County, Texas on December 18, 1948 at 11:55 o'clock p.m. and are recorded in Vol. 381, Page 51, of the Deed Records of Lubbock County, Texas.

3. In such Dedication Deed, Vincent Carr and wife, Ruth Carr, imposed protective covenants running with the land for a period of thirty-five years (35) years from December 1, 1948 and thereafter for successive periods of ten (10) years each unless eliminated or modified in whole or in part by a majority vote of those persons owning lots or premises in said subdivision.

4. The Dedication Deed contains the following, among other, language:

> "1. All lots in VIRGINIA PLACE shall be used for residential purposes by white persons only; ...
>
> 2. A residence shall be construed to be a single family dwelling not to exceed two stories in height, together with the out buildings or structures appurtenant to a private dwelling; and no structures shall be erected,

altered, placed or permitted to remain on any of said tracts of land except one family dwellings, together with garage or garages and necessary servants' quarters. The garage or servants [sic] quarters may include a laundry room or laundry facilities to be used for the convenience of the occupants of the dwelling and not as a public laundry; and except as herein set out, no other buildings may be erected on such plot or premises except childrens' [sic] playhouses or buildings of like nature used for the convenience or pleasure of the occupants of the dwelling.

. . . .

4. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood. No horses, cows, hogs, sheep or other livestock or polutry [sic] shall be kept for any time or any purpose on any of the lots in this subdivision."

5. Said Dedication Deed also contains the following provision: "If the parties hereto, any of them, their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in VIRGINIA PLACE to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such covenant, and either to enjoin them from doing so or to recover damages for such violation. The rights of action here given are several and cumulative to all owners."

6. Each of the Plaintiffs herein own property, on which their homes are located, in Virginia Place.

7. Defendant is the owner of all of Lot Seven (7) and the West fifty feet (50') of Lot Six (6) in said Virginia Place.

8. Defendant acquired his property from Virginia Gayle Perry, individually and as Independent Executrix of the Estate of O.B. Perry, Deceased.

9. The house located on the property owned by the Defendant was occupied by Mrs. Perry, and, before his death, by Mrs. Perry and her husband, as their home, prior to its acquisition by Mr. Shaver.

10. Defendant SHAVER has leased the property owned by him in said Virginia Place to a non-profit corporation, Lubbock Area Extended Rehabilitation Services (LAERS) for the housing and

care of persons mentally handicapped or retarded or physically handicapped.

11. Prior to the time Defendant acquired his property and prior to the time Defendant leased the property to LAERS, both the Defendant and LAERS were aware of the restrictive covenants applicable to the property and of the Plaintiffs' intentions to enforce such covenants.

12. The Defendant leased the property to LAERS and moved some furniture into the house prior to recording his deed to the property.

13. Under the lease from the defendant, the house owned by the defendant was at the time of trial occupied by four (4) adult persons, none of whom are related, and one of whom was acting as a "home care provider" for the other three (3) who are handicapped persons. These persons, other than the home care provider, were persons approved by and receiving aid from the Texas Rehabilitation Commission.

14. It is the intention of LAERS to ultimately place in said home no more than six (6) such persons, plus a single person or a married couple as a home care provider or providers. LAERS does not expect that any of these persons will be related by blood, adoption or marriage, other than the married couple who might serve as "home care providers."

15. If permitted to continue the use of the property belonging to the Defendant, LAERS will continue to use the house for the housing of persons eligible for assistance from LAERS and the Texas Rehabilitation Commission.

16. The living standards of the Texas Rehabilitation Commission, from whom LAERS receives its primary funds, would permit the housing of more persons in said house than the six (6) individuals plus a home care provider or home care providers now intended.

17. The occupants of the house under the lease with LAERS are free to move from the house at their discretion, without any type of family control.

18. The occupants of the house owned by the Defendant each individually pay rent to LAERS and then LAERS pays rent to the Defendant.

19. LAERS is paid a substantial sum each month by the Texas Rehabilitation Commission for providing care for the occupants of the Defendant's house.

20. All other dwellings in Virginia Place are occupied by families consisting of persons related either through blood or marriage.

21. At the time the restrictive covenants were imposed by Vincent Carr and wife, Ruth Carr, it was their intention that the words "single family" as used in such restrictions be interpreted in accordance with the commonly accepted meaning of such words as such meaning existed in the year 1948, the date of such Dedication Deed, which the Court finds to be one or more persons related by blood, adoption or marriage.

22. Section 2.45 of the City of Lubbock Comprehensive Zoning Ordinance, 1975, defines a family as "one or more persons related by blood, adoption or marriage, or not nore than two (2) unrelated persons living and working together as a single housekeeping unit."

23. The lots on which Defendant's house is situated are zoned for use for single-family dwelling only.

24. The Plaintiffs, because of the proximity of their homes to the property of the Defendant in Virginia Place, will suffer special damage from the present and intended use of Defendant's property not suffered by the community in general.

25. The house owned by defendant Shaver was, at the time of trial, a single-family dwelling structure.

Conclusions of Law

1. Considering the language of the Dedication Deed alone without the aid of extrinsic evidence, those provisions of the restrictive covenants set forth above in the Court's Findings of Fact restrict the Defendant's property to use for single-family residential purposes only.

2. The use being made by the Defendant of his property is not a single-family residential use and is in violation of the restrictive covenants applicable to his property.

3. The use being made by the Defendant of his property in said Virginia Place, through his tenant, is in violation of the City of Lubbock Comprehensive Zoning Ordinance, 1975, because the persons residing therein are not a "family" as defined in said Ordinance.

4. The Plaintiffs, as private individuals, do not have standing to maintain a suit to enjoin the violation by the Defendant of the City of Lubbock Comprehensive Zoning Ordinance, 1975.

RENDERED AND ENTERED this 19th day of December, 1980. [As amended on January 13, 1981].

/s/ William R. Shaver

Judge Presiding